

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 569 OF 2000

Smt.Shantabai Ramchandra Divate	}	
Age-50 years, Occ : Nil	}	
R/at Mukhed, Tal-Yewala, District-Nashik.	}	...Appellant

Versus

1. Shri.Abbasali Choudhari	}	
Occ : Truck Owner, R/at B-1, Fajal House,	}	
Ressiwai Compound, CST Road, Kurla,		
Mumbai.		
 2. New India Assurance Co. Ltd.	 }	
New India Insurance Bldg,	}	
87, M.G.Road, Fort, Mumbai, Nashik	}	
Branch, Mumbai Naka, Mumbai Agra Road,	}	
Nashik.	}	...Respondents

Mr.Sujay Palshikar i/b Mr.Shiram S. Kulkarni, for the Appellant.
Ms.S.S. Dwivedi, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

1. The Claimant has preferred this Appeal against dismissal of the Claim Petition.

2. It is contention of the learned counsel for the

Appellant-Claimant that deceased was traveling on the motorcycle and his motorcycle was dashed by the offending truck. Due to dash deceased died. The accident occurred due to sole negligence of the offending truck, but this fact is not considered by the Tribunal. The learned counsel further submitted that the deceased was doing business of selling vegetable and fruits and he was earning Rs.3,000/- to Rs.3,500/- per month, but the Tribunal has considered Rs.900/- per month, which is on lower side. The learned counsel further submitted that the Tribunal has not awarded consortium amount, it be awarded. The learned counsel further submitted that the Tribunal has dismissed Claim Petition on the ground that the Claimants failed to prove negligence of the driver of the offending truck, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that for the said accident offence was registered against the deceased. The negligence of the driver of the offending truck was not proved before the Tribunal. No evidence regarding income of the deceased was

produced before the Tribunal. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Nashik.

5. It is Claimant's case that on 21st April 1991 at about 11.30 a.m. deceased Ramchandra was proceeding on his motorcycle from Yeola to Mukhed. When he reached near village Rayate on Yeola, Nashik road his motorcycle was dashed by the truck bearing No.MCU-4185. Due to said dash deceased sustained grievous injuries and died while taking treatment. The offence was registered against the deceased. To prove the negligence of the driver of the offending truck, the Claimant has examined Claimant No.1 but I am not considering her evidence, as she was not present at the time of the accident. The driver of the offending truck did not step into witness box.

6. While dealing with the issue of negligence the Tribunal has observed that the deceased was prosecuted for

driving motorcycle rashly and negligently and by going on wrong side, he gave dash to the truck. The accident is result of rash and negligent driving of the deceased and not of driver of the truck. On that ground, the Tribunal has observed that accident occurred due to negligence of the deceased and the Tribunal has dismissed the Claim Petition. I am unable to understand the observations of the Tribunal as the Tribunal has merely relied on the FIR, the FIR was lodged against the deceased. It appears from record that driver of the offending truck had reported the incident to the Police. On his report Police registered FIR against the deceased without making any enquiry. The spot panchanmma at Exhibit-35 shows that 12 feet break marks of the tyres of truck were appearing on the road. The road was 100 ft. It further appears that break marks were appearing from 100 ft. distance of northern side of the road. This panchnamma shows that there was head on collision between the two vehicles. The driver of the truck did not enter into witness box to prove negligence of the deceased. Considering the evidence on record, I am considering 50% negligence of the driver of the offending truck and 50%

negligence of the deceased. To prove income of deceased the Claimant No.1 Shantabai has examined herself. She has stated that her husband used to sale vegetable and fruits in tempo by visiting bazar to bazar. His monthly income was Rs.3,000/- to Rs.3,500/- per month. In cross-examination she has admitted that she has not submitted any receipt in respect of purchase and sell of vegetables.

7. While dealing with the issue of income of the deceased, considering evidence on record the Tribunal has considered monthly income of deceased at Rs.900/- per month. In my view, it is on lower side. In Claim Petition the Claimant has mentioned the income of deceased at Rs.2,000/- and Rs.2,500/- per month. While giving evidence Claimant No.1 has mentioned at Rs.3,000/- and Rs.3,500/- per month. Considering evidence on record, I am considering monthly income of deceased at Rs.1,700/- per month. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimant is entitled for 25% future prospects, I am considering

1 2017 ACJ 2700 (SC)

25% future prospects. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering this calculation, the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.1,700.00
(+) Future Prospects (25%)	Rs.425.00

	Rs.2,125.00
Annual Income after Future Prospects (Rs.2500 X 12 months)	Rs.25,500.00
Multiplier of 13	
Rs.25,500 X 13	Rs.1,65,750.00
Rs.3,90,000.00 – 50% Contributory Negligence = Rs.1,67,750/-	
Loss of Estate	Rs.18,000.00
Loss of Consortium	Rs.48,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	Rs.2,49,750.00

8. In view of above, I pass following order.

ORDER

(i) The Appeal is allowed.

² 2018 ACJ 2782 (SC)

(ii) The Claimant is entitled for enhanced amount of Rs.2,49,750/- @ 7.5% interest per annum from date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.84,000/- consortium amount the Claimants are entitled @ 7.5% interest on this amount from 1st November 2017 till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.

(iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.

(v) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.

(vi) All pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)